

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 4, 2009

JOHN A. WOODRUFF, SR. v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Hickman County
No. 08-5101C James G. Martin, III, Judge

No. M2009-00187-CCA-R3-HC - Filed September 9, 2009

The petitioner, John A. Woodruff, Sr., appeals the denial of his petition for habeas corpus relief. The petitioner claims that he is being held unlawfully in that his sentence has expired and that due process demands his release after he was earlier mistakenly released by the Tennessee Department of Correction. After review, we affirm the trial court's denial of habeas corpus relief.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which ALAN E. GLENN and J.C. McLIN, JJ., joined.

John A. Woodruff, Sr., Only, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter, and Lacy Wilber, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

The record in this case reveals that on July 10, 1997, the petitioner pled guilty, in case number 5955 from Jefferson County, to one count of possession of cocaine in excess of .5 grams with the intent to sell, a Class B felony, and one count of driving on a revoked license, a Class B misdemeanor. He was sentenced to eight years on the Class B felony and ordered to serve eight months, with the balance on probation. His misdemeanor conviction ran concurrently with his felony conviction.

Thereafter, on July 21, 1997, in case number 60452 from Knox County, the petitioner pled guilty to one count of possession of cocaine in excess of .5 grams with the intent to sell, a Class B felony, and simple possession of marijuana, a Class A misdemeanor. Both judgments reflect that these sentences were consecutive to the sentence the petitioner received in case number 5955 from Jefferson County. In fact, both judgments expressly provide that probation on these sentences shall

begin after the expiration of the Jefferson County sentences on July 10, 2005. Both Knox County judgments set out that the petitioner's probation shall not expire until July 10, 2013.

Both of the petitioner's probations were later ordered revoked, and he was serving his sentences in the Tennessee Department of Correction. In November of 2004, the petitioner was released from custody by the Tennessee Department of Correction as a result of a mistake or error in the Department not realizing his Knox County sentences ran consecutive to the Jefferson County sentences. However, the petitioner was not subject to being released after service of eight years; rather, it was to be after sixteen years. The Department learned of its error and reincarcerated the petitioner in June of 2005.

On December 9, 2008, the petitioner filed a petition of habeas corpus relief, which was denied, and this appeal followed.

Analysis

The petitioner, proceeding *pro se*, acknowledges in his brief that the Tennessee Department of Correction made an error in calculating the petitioner's sentence expiration dates. He complains that his mistaken release and reincarceration were fundamentally unfair and that the State should be stopped from making him serve any more time. Essentially, the petitioner's argument asserts that his reincarceration was a violation of his due process rights.

In Tennessee, "[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever . . . may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment." T.C.A. § 29-21-101 (2006). However, the burden is on the petitioner to establish by a preponderance of the evidence that the challenged judgment is void or that a term of imprisonment has expired. *State ex rel. Kuntz v. Bomar*, 381 S.W.2d 290, 291-92 (1964). A trial court may grant a writ of habeas corpus only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007) (quoting *Archer v. State*, 851 S.W.2d 157, 158 (Tenn. 1993)).

A trial court is not required, as a matter of law, to grant the writ or conduct an inquiry into the allegations contained in the petition. T.C.A. § 29-21-109. If the petition fails on its face to state a cognizable claim, it may be dismissed by the trial court summarily. *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280, 283 (1964); T.C.A. § 29-21-109. The determination of whether habeas corpus relief should be granted is a question of law. *Summers*, 212 S.W.3d at 255; *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Therefore, this court's review is *de novo* with no presumption of correctness given to the findings and conclusions of the lower court. *Summers*, 212 S.W.3d at 255; *State v. Livingston*, 197 S.W.3d 710, 712 (Tenn. 2006).

A claim of a violation of due process rights is not a cognizable claim for habeas corpus relief. *Smith v. Hesson*, 63 S.W.3d 725, 728 (Tenn. Ct. App. 2001); *Joey Salcido v. State*, No. M2007-00166-CCA-R3-HC (Tenn. Crim. App. at Nashville, June 21, 2009). Thus, there was no error in the court's dismissal of the petition.

Conclusion

Based on the foregoing and the record as a whole, we affirm the trial court's denial of habeas corpus relief.

JOHN EVERETT WILLIAMS, JUDGE